

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

INTERSTATE CHEMICAL CO., INC.

and

Cases 6-CA-34661  
6-CA-34696

INTERNATIONAL CHEMICAL WORKERS  
COUNCIL OF THE UNITED FOOD &  
COMMERCIAL WORKERS UNION,  
LOCAL 211-C

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for the General Counsel.

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(*Cohen & Grigsby, PC*), of Pittsburgh, Pennsylvania,  
for the Respondent.

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of Akron, Ohio, for the Charging Party.

DECISION

Statement of the Case

MARTIN J. LINSKY, Administrative Law Judge. On May 6, 2005, July 26, 2005, August 22, 2005, and October 28, 2005 the charge, first amended charge, second amended charge, and third amended charge in Case 6-CA-34661 were filed against Interstate Chemical Company, Inc., Respondent herein, by the International Chemical Workers Council of the United Food and Commercial Workers Union, Local 211-C, Union herein.

On May 24, 2005, August 22, 2005, and October 28, 2005, the charge, first amended charge and second amended charge in Case 6-CA-34696 were filed against Respondent by the Union.

On November 2, 2005 the National Labor Relations Board, by the Regional Director for Region 6, issued an Amended Consolidated Complaint, herein Complaint, alleging that Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act, herein the Act, when on April 29, 2005 it unlawfully laid off four employees at its Hermitage, Pennsylvania, facility, when on May 17, 2005 it unlawfully laid off five employees at its Vanport, Pennsylvania, facility and when in late May 2005 Respondent, by its President, Albert Puntureri, told employees that the laid off employees had been laid off because of their union activity, that they would not be recalled, and that Respondent would not hire job applicants with prior union activity.

Respondent filed an Answer in which it denied that it violated the Act in any way.

A hearing was held before me on January 26 and 27, 2006, in Pittsburgh, Pennsylvania. Upon the entire record in this case, to include posting hearing briefs submitted by Counsel for General Counsel, Counsel for Respondent, and Counsel for the Charging Party and giving due regard to the testimony of the witnesses and their demeanor, I make the following

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### I. Findings of Fact

At all material times, Respondent, a Pennsylvania corporation with its headquarters in Hermitage, Pennsylvania, and an office and place of business in Vanport, Pennsylvania, is engaged in the manufacture and nonretail sale of chemical products.

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Respondent admits, and I find, that at all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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### II. The Labor Organization Involved

Respondent admits, and I find that at all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

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### III. The Alleged Unfair Labor Practices

#### A. Overview

Respondent has approximately 16 facilities in various states and employs over 300 people. More specifically in 2003 it had 346 employees, in 2004 it had 363 employees and it had 337 employees in 2005.

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Only three of Respondent's facilities are unionized, i.e., the two facilities in this litigation, Hermitage and Vanport, Pennsylvania and a facility in Batavia, New York. The Union is the collective bargaining representative at all three facilities and represents approximately 87 employees.

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The Union was certified to represent employees at the three facilities in 2004 following an election held on January 9 and 10, 2004. Respondent and the Union reached agreement on a collective bargaining agreement which ran from December 10, 2004 to December 31, 2005. It is uncontested that Respondent told employees before and during negotiations that it was very proud that since its founding in 1968 it had never had a layoff. In addition, it is uncontested that during negotiations for the 13 month collective bargaining agreement Respondent never once told the union that Respondent was in financial difficulty.

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On April 29, 2005 Respondent laid off four employees at its Hermitage facility. All four were union represented skilled maintenance employees and one of them, Christopher Baroni, had been very active on behalf of the Union. The other three laid off skilled maintenance employees were Martin Andrusky, Mark Jenkins, and Joseph Sposito.

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On May 17, 2005 Respondent laid off five union represented terminal operators at its Vanport facility.

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In late May 2005, after the layoffs, one of the laid off skilled maintenance employees at Hermitage, Joseph Sposito, had a conversation with Respondent's President Albert Puntureri at Puntureri's house where Sposito had been hired to cut the lawn following his layoff. According to Sposito, Puntureri told him that the nine employees laid off had been laid off, because of the

union activity of some of them and he would have laid off others who were active for the Union, but the business couldn't afford it.

Respondent claims that the layoffs were economically justified and union activity played no part in who was selected for layoff.

Puntureri denied that he ever made the statements to Sposito which Sposito attributes to him. The testimony of Puntureri and Sposito on which each said is set forth more fully below.

## B. The Layoffs

As noted above Respondent laid off all four skilled maintenance employees at Hermitage, i.e., Martin Andrusky, Christopher Baroni, Mark Jenkins, and Joseph Sposito.

Chris Baroni, according to Union organizer Ron Moore and himself, was very active on behalf of the Union. Baroni solicited union authorization cards, securing about 30 signed cards. He spoke up at captive audience meetings. Baroni also signed the certification of results of election on behalf of the Union. Baroni wore union insignia openly at work and was selected to be a Union Vice President at Hermitage. He was on the Union bargaining committee and was a union observer at the election on January 9, 2004.

At the Board representation hearing prior to the election Chris Baroni testified as a union witness.

Again, during negotiations Respondent never said it had financial problems. Respondent also never asked the Union to reduce wages or benefits rather than have the layoffs. However, there was no requirement under the collective bargaining agreement that they do so.

The evidence before me establishes that Chris Baroni was a very active union supporter and Respondent concedes it knew it prior to his layoff. There was no evidence the other three skilled maintenance employees were active on behalf of the Union.

The four skilled maintenance employees at Hermitage had simply been called maintenance employees prior to the collective bargaining agreement. Under the collective bargaining agreement their title changed to skilled maintenance employees. The job description for skilled maintenance employees was as follows:

- maintain and repair facilities/equipment
- perform welding operations and electrical system and HVAC maintenance and repairs
- operate, maintain, and repair tow motors and other material handling equipment
- operate, maintain, and repair earth moving equipment
- perform general housekeeping. See GC Exh. 14.

Of the four skilled maintenance employees who were laid off their seniority was as follows: the most senior was Joe Sposito, then Mark Jenkins, then Chris Baroni, and finally Martin Andrusky. Two maintenance helpers were not laid off.

On May 17, 2005, five of six terminal operators at Vanport were laid off, i.e., David Shetano, his brother Allen Shetano, Andy Gray, Cliff Shillingburg and Timothy Schooley.

Evidence at the hearing reflects that prior to the layoff all five were active on behalf of the Union. David Shetano testified at the Board Representation Hearing on behalf of the Union and was elected as a union vice president. Allen Shatano was selected to be a shop steward. Cliff Shillingburg was also selected for a union leadership position.

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### C. Respondent's reasons for the layoffs

Respondent claims it laid off the employees at Hermitage and Vanport because of economic necessity.

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Respondent called two witnesses in its case - President Albert Puntureri and William McKnight, an accountant and partner in the certified public accounting firm of Magill, Power, Bell and Associates.

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McKnight was a very impressive witness.

McKnight testified that in 2001 Respondent borrowed in excess of \$30 million from the financial services arm of Merrill-Lynch. There were three different loans. One of the loans was a line of credit the other two had a fixed term of years.

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As part of the loan package Merrill Lynch imposed seven different loan covenants that Respondent was required to meet or risk Merrill Lynch calling the loan and Respondent being forced to liquidate its assets if it could not find a replacement lender.

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McKnight prepares financial reports for Merrill Lynch to show Respondent's compliance or non-compliance with the seven covenants. The covenants govern 1) the additional debt Respondent can incur, 2) the amount of capital expenditures Respondent can incur, 3) the fixed charge coverage ratio, 4) distribution limits, 5) the ratio of funded debt to EBITDA (earnings before interest, taxes, depreciation and amortization), 6) inventory days on hand, and 7) amount of net working assets. There are permissible amounts within the seven categories.

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Respondent introduced into evidence along with McKnight's testimony the record of Respondent's compliance with the covenants based on quarterly reports prepared by McKnight from financial and other data supplied him.

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The quarterly reports reflect whether Respondent was in compliance with the covenants or not. If in compliance this would reflect that Respondent was in a position to service its large debt with Merrill Lynch.

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Respondent was in compliance as of the March 31, 2003 and June 12, 2003 reports. It was not in compliance as of the September 29, 2003 and January 25, 2004 reports. It was back in compliance as of the April 26, 2004 report but fell out of compliance as of the September 13, 2004 report. Indeed as of the January 26, 2005 report Respondent was out of compliance on 5 out of 8 covenants. An eighth covenant on minimum earnings was added to the other 7 covenants in early 2004. As of the May 12, 2005 report Respondent was out of compliance with respect to 3 of the 8 covenants. This was also true as of the June 23, 2005 report. It was in late April 2005 and mid-May 2005 when the lay offs were made.

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Respondent introduced documents that reflect that with respect to the important figure of income before provision for income taxes Respondent's numbers were \$4.2 million of income before taxes for the year ending October 31, 2002, which fell to \$2.5 million for the year ending

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October 31, 2003, then fell to \$100,413 for the year ending October 31, 2004 but rebounded to \$1.6 million for the year ending October 31, 2005.

5 Merrill Lynch could have called the loans when Respondent was out of compliance. Merrill Lynch instead urged Respondent to cut expenses. It should be noted that while out of compliance Respondent did not default on any loan payments.

10 The General Counsel and the Union established that Merrill Lynch was not specific on how Respondent should cut expenses and did not urge Respondent to make any layoffs at Hermitage or Vanport or anywhere else for that matter.

In late 2004 Respondent determined in an effort to cut expenses that it would monitor wages and overtime, and ensure that employees who were kept on the job were truly needed.

15 As a result of Respondent's financial situation no employee contributions had been made to the profit sharing plan for the last three or four years. In 2004 no trucks were purchased.

20 Albert Puntureri, Respondent's President and owner, also testified. Puntureri testified that it was he who selected the four skilled maintenance employees at Hermitage and the five terminal operators at Vanport for layoff.

25 The layoffs, according to Puntureri, were driven by the need expressed by Merrill Lynch for Respondent to cut expenses.

30 The four skilled maintenance employees were laid off because they did "special projects" and Respondent was cutting back on "special projects." Laid off employees Joseph Sposito and Chris Baroni testified they were not familiar with the term "special projects." In Section III, B, above the work to be done by skilled maintenance employee is spelled out (See GC Exh. 14) and "special projects" are not even mentioned. According to Puntureri "special projects" was work that was nice to have done but not essential to the running of the business. It was cutting back on capital improvements.

35 Sposito went to Hermitage after his layoff and he saw supervisors doing some of the work that he and the other skilled maintenance employees had done. However, under the contract supervisors were permitted to do unit work. Two maintenance helpers were not laid off. No one was hired to fill the positions of the laid off skilled maintenance employees.

40 The five terminal operators at Vanport, a water terminal, who unloaded ships and loaded cargo onto trucks, were selected for layoff because Puntureri had visited Vanport and saw the terminal operators just hanging around and not working. As a result Puntureri credibly testified he studied what amount of time the loading and unloading took and determined he could get along with just one terminal operator. After they were laid off the truck drivers would unload cargo from ships and load their own trucks. Respondent also reduced the hours of operation at Vanport from 24 hours a day to 16. No one was hired to replace the terminal operators. 45 Although Respondent contracted with a security firm to guard the facility when not in operation.

50 Respondent in response to its financial situation also shut down its Des Moines, Iowa, facility and eliminated six non-union jobs. Respondent also shut down its Peoria, Illinois, facility with several non union employees losing their jobs.

Again the positions at Hermitage and Vanport were not filled although employees were hired by Respondent to work at its other facilities in different capacities.

Respondent made a good case that the layoffs at Hermitage and Vanport were made for sound business or economic reasons and the employees selected at Hermitage and Vanport for lay off were not selected because of the union activity of some or all of the laid off employees.

I note that there were lay offs at non union facilities and that not all the active pro union employees were laid off. With the lay offs the bargaining unit, it appears, was reduced to 78 unit employees at the three facilities. No one at the third union facility, Batavia, NY, was laid off.

#### D. What did Albert Puntureri say to Joseph Sposito about the layoffs

Joseph Sposito, one of the four laid off skilled maintenance employees at Hermitage, was hired by Albert Puntureri to cut the lawn at the house where Puntureri lives. Although Puntureri lived in the house and had for years it was owned for estate planning purposes by a family corporation.

According to Sposito he spoke with Puntureri on a number of occasions after he was laid off. Sposito's testimony was as follows:

“Q. Now, after you were laid off on April 29<sup>th</sup>, did there come a time that you spoke with Al Puntureri about the layoff?

A. Yes.

Q. And when did you speak with him?

A. I'd say approximately three or four weeks after the layoff.

Q. And how did you come to speak with him?

A. I called him at his house.

Q. This is a telephone conversation?

A. Yes.

Q. And can you tell us about that – how did that conversation begin?

A. I was just asking him how long he thought I'd be laid off because I was wondering about my unemployment running out. I was worried about that.

Q. What did he say?

A. He said he wasn't sure, but he, you know, hoped to call me back soon. He says not to worry because I was most senior employee.

Q. Did he say anything else?

A. Yes, he did. I asked him – I go again 'Well, why do we have to be laid off?' And he said his lawyer thought it would be a good idea to lay the four skilled maintenance people off.

Q. Did you speak with Puntureri again after that telephone conversation?

A. Yes, I did.

Q. And about when was that?

A. I'd say approximately a week after the phone conversation.

Q. And where did that this second conversation take place?

A. That took place at his house.

Q. And what were you doing there?

A. Cutting grass.

Q. And how did you come to have this conversation with him?

A. I was cutting the grass, he came out and said he'd like to have a word with me before I left and then –

Q. Did you right away?

- A. No, not right away. A little while later he came out and said that he would have to go – he needed to go someplace, so he'd like to have it now. And so we proceeded to – he has a covered patio connected to his house. That's where we went.
- 5 Q. So what happened when you got to the covered patio?
- A. We sat down, he asked me if I wanted something to drink, got me a glass of water and then started our meeting.
- Q. Could you describe his attitude during this conversation?
- 10 A. He started out calmly, but as the conversation went, it got a little more – he got aggravated, more aggravated.
- Q. So how did the conversation start?
- A. It started out him showing me charts and graphs, kind of scribblings on a tablet paper saying how much money he was saving by laying us guys off from Heritage and how much more money he was saving by laying the guys off from Vanport.
- 15 And then I asked him again, I go – or, actually, 'Why did you have to lay us guys off? You know, you didn't have the lay the whole skilled maintenance people off. You could have kept at least kept me and Mark.' And he said his lawyer said it wasn't a good idea to make the cutoff right at Chris Baroni.
- 20 Q. Did he say why?
- A. No, he didn't say why at that time, no.
- Q. Did he say anything about Chris Baroni at that time?
- A. He said, 'Cut it off at Chris Baroni.'
- 25 Then I asked him again 'Well, why did you have to lay me off? And he said his lawyer said that it would send a message out to the other employees if he laid all the skill maintenance people off, including the most senior, and that would be me.
- Q. Okay. And then what happened?
- A. I'm getting nervous now.
- 30 Q. Take your time.
- A. Okay.
- Q. Did you talk about what would happen if you came back to work?
- A. Yes. I actually said, 'I think if I came back to work that we'd probably end up going on strike.'
- 35 And Albert said, 'The union let the bad contract go through.' And he said if he had anything to do with it, it would be worse, and he guaranteed the next contract would be worse.
- Q. Did he talk anymore about why he cut off the – why he didn't cut the layoff at Baroni?
- 40 A. Like I said, as the meeting went, he got a little bit more aggravated, and he said that his lawyer told him that if they cut it off at Baroni that the union would probably bring him up on charges. And he said he didn't understand why Chris Baroni was so strong about a union because good workers don't need unions, and Chris Baroni was a good worker.
- 45 Q. Did you say anything to that?
- A. Yeah, I asked him – I said, 'Chris Baroni told me, though, it said right on his application that he was in unions and his resume had something about unions on it.' And he said to that that from now on he was going to go through the applications and resumes personally to make sure that that never happened again.
- 50 Q. Did Puntureri talk about the layoff at Vanport at all?
- A. Yes, he did. He said he got rid of other strong union people when he got rid of

the people from Vanport, and he said that Dave Shetano and the other guys weren't going to get called back because he hired a security firm actually to take their place as far as guarding the place and that he'd have his drivers loading and unloading that happened – that took care of it at the plant.

5 Q. Did he say anything else?

A. Well, he said that he probably shouldn't tell me this, but –

Q. Did he say anything else about Vanport?

A. Vanport?

Q. Yes.

10 A. He said that he probably would have laid them off anyhow.

Q. You were about to say something –

A. Yeah. He said that he probably shouldn't tell me this, but he's going to anyhow. He'd go after Steve Coonfare and John Adams because they were big union supporters, but he couldn't get to them without laying off all of his drivers because they were, like, his most senior drivers.<sup>1</sup>

15 Q. Did he talk about any other employees?

A. He mentioned that, like, two or three other employees had come up to him mentioning that they wanted to opt out of the union, and he said something about he thought he had enough votes to get the union voted out.

20 Q. And do you recall anything else that he said about Chris Baroni?

A. No, not at this time.

Q. By the way, while you were working – have you been recalled to work?

A. No, I haven't.

Q. Did you receive any discipline while were you working at Interstate?

25 A. No.

Q. Awards?

A. Yeah, I got a few awards."

30 Puntureri admits he hired Sposito to cut his yard but denies he made the statements attributed to him by Sposito. His testimony was as follows:

"A. After the layoff, Mr. Sposito approached one of our people and asked if he could cut the lawn. It would be Mr. Coates.

Q. His lawn or your lawn?

35 A. His lawn. He wanted to cut Mr. Coates' lawn. So Mr. Coates hired him, and then Mr. Sposito asked Mr. Coates if Mr. Coates would ask Al, meaning me, if he would be allowed to cut my lawn. Well, I had a lawn care tender.

Q. And Mr. Coates – Trey relayed this to you?

40 A. Trey relayed that to me, and I said, 'I'll check with my lawn care person, and if he's busy enough that he won't mind my leaving him, I'll give Joe the job.' So when I checked with my care – my lawn care guy, he said, 'No. I'm plenty busy, go ahead, just do it.' So I gave the approval for Joe to come and cut my grass.

Q. Approximately when was this?

45 A. Sometime in May.

Q. And do you recall the exact date or no?

A. I do not.

Q. First half, latter half of May?

50 <sup>1</sup> Apparently there were 54 drivers at Hermitage. Adams was 15<sup>th</sup> in seniority and Coonfare was 12<sup>th</sup>.



A. Probably first half.

Q. And following that, did Joe Sposito actually come to cut your lawn?

A. He came, and the first visit he made being new, he had to learn the ropes and all, so he got about half of the lawn cut, half of the duties, not just the lawn, but half of the duties.

Q. What else was there besides the lawn?

A. Well, there's some weeding to do around the flower gardens and things like that, a little raking maybe.

Q. Weedwacking?

A. Just general – weedwacking as well and – so – and his lawn mower automated, he had to take it off of the truck and get it to the proper location and bring his small mowers to places where he couldn't mow with the large mower.

In any event, he got about half the job done that first visit and – forgot the exact day, but the second day it rained. The third day there was a little bit of dew on the grass, but the fourth day it was sun shining again. And by now, because of the rain, the half that was already cut is almost needing cut again, and the half that didn't get cut was getting out of control.

So I called Joe and he – 'oh, I'll get there. I'll get there.' It was another day coming before he did that. Finally, he got the lawn cut for the first go around. He then asked me if I would hire his youngster. CJ or AJ, I'm not sure, and I asked how old he was, and he told me that CJ was – or AJ was 17. I said, 'Okay. We'll give him a try.'

So they both came the next time. It was about a week later, I think, and AJ was totally unsatisfactory. He sort of just rested on the shovel, so to speak.

I called Joe up to discuss the matter. We always had water on the porch for him to – he and his helper that one time the helper and for he to drink whenever they wanted to. I said to Joe 'We're not getting much production out of your son.'

He says 'I know. He's – " unless I stand right over him all the time, I can't get him to do it.'

And I said, 'Well, Joe, then I don't think I need to have him anymore. As a matter of fact, if you're not going to come on a regular basis, I'm not going to have to have you anymore either.'

He had cut half of the grass on that second time. There may have been a third time. I'm not totally sure. He may have come three times, but either the second time or the third time he didn't complete the job. He never came back.

After I told him AJ was no longer needed, three or four days later half the yard was cut and he didn't return, I went back with tail between my legs and sort of begged my old gardener to come back and finish the job, and the old gardener said, 'What happens if Sposito shows up while I'm cutting?'

I said, 'If he does, you call me and I'll handle the matter,' but Joe never showed up. That was the extent of it.

Q. Now, you said that the first time that he mowed was in early May, but you're not sure of the date?

A. It could have been midway. I just don't know.

From the way the paycheck went, it would appear as though it was early May.

Q. From the first time that he showed up and cut until the very last time when he did the half a lawn and never showed up again, how long was that?

A. A month or less.

Q. So it was no later than mid-June?

A. Probably prior to mid-June. Probably early June. I'm guessing. But for the time frame that we're speaking of, the grass grows very quickly. He was there either

two or three times, and that would have encompassed three to four weeks, at the most.

Q. And is there any –

A. He never did go finish Mr. Coates' lawn either. He quit there.

5 Q. And is there any way that that could have been in July?

A. I seriously doubt it. It could have stretched through June, but it's not into July.

Q. Now, Mr. Sposito testified that the first time he talked to you about doing the lawn, that it was on the telephone, and that he asked questions about the layoff and recall.

10 A. He did.

Q. And his testimony, and this may not be his exact words because these are just my notes, were that you said that the lawyer thought it would be a good idea to lay off the four skilled maintenance employees and something to the effect of that you couldn't stop at Chris.

15 A. I never made such a statement.

Q. Are you positive?

A. I am certain.

Q. Did I or any other lawyer ever offer you advice to that effect?

A. No.

20 Q. Are you sure?

A. Certain.

Q. Did you have a conversation with Joe Sposito on your patio?

A. I did.

Q. And would you tell us about that conversation?

25 A. The nature of that conversation was in reference to AJ not doing the job and Joe completing the job in a more timely fashion or we wouldn't have a job for him. In addition, he asked about the potential of recall, and I told him that until we were in covenant, I couldn't even consider recall.

Q. He said, 'What's the earliest time frame that you think we can be in covenant?'

30 I said, 'Hopefully by the end of our fiscal year, which is October 31, and if that's the case, I still won't know about the covenant until late December because it takes close to 90 days to put all the work together, the final papers.'

So he said, 'Are you telling me the earliest I can consider making it back is by the end of December?'

35 I said, 'At the best, that's true.'

So he packed up and again left. That's the time he left it half done again. I called a couple days later and I said, 'Where you been? What's going on? We've had good sunshine. The last time it rained you couldn't come. You could have been here.'

40 His response was 'I was so depressed over the news that you gave me in regard to the potential of not having a job until later November, at the best, that I went out and got drunk last night and, quite frankly, I have trouble getting up to go do lawn work anyway because I need structure. I need to have a job where I'm required to be there every day. I just need structure.' I mean, maybe not in those words about structure, but he said, 'I need to have something that's definite to do every day,' something like that.

45 Q. Now, he testified that during that conversation you said something to the effect, as he said you said in a telephone call, that you – either you decided or you were advised to lay off all the skilled maintenance employees and not cut it off at Baroni. Did you make any statements to that effect?

50 A. No, sir.

Q. Did you make any statements that could be misconstrued to be to that effect?

A. I don't believe so, no.

Q. Did you make a statement that your lawyer said it would send a message if you laid off all skilled maintenance employees?

A. No.

5 Q. Did any lawyer ever advise you to that effect, me or any other?

A. No.

Q. He testified something to the effect that he asked you something about Vanport and claims that you said you got rid of other strong union employees at Vanport and they're not coming back.

10 A. Never made such a statement.

Q. Anything that could be misconstrued to that effect?

A. Never made that statement to anyone, and I don't know where Joe would have such an idea.

Q. You were present for his entire testimony?

15 A. I was.

Q. And I'm not sure if based on my notes I've covered all the statements that he attributed to you. At any time during this conversation or any other with Joe Sposito, did you tell him, in any way, shape or form, that the elimination, be it permanent or temporary, of the skilled maintenance function had anything, in any way to do with the union or union support?

20 A. No, never.

Q. Any statement that could be misconstrued to that effect?

A. No. Every conversation with Mr. Sposito had centered around and focused on our inability to meet covenant, period."

25

In response to questions by me Puntureri denied telling Sposito that he wanted to get rid of John Adams and Steven Coonfare.

30 Needless to say if I credit Sposito's testimony I would conclude that the layoffs were unlawful and in retaliation for union activity even though Respondent had some financial difficulties and was trying to reduce expenses. I would conclude that the employees at Hermitage and Vanport were selected for layoff for unlawful reasons. However, I do not credit Sposito's testimony.

35 If Sposito is to be credited then his conversation on the patio with Puntureri had to have taken place after the lay off at Vanport on May 17, 2005 because, according to Sposito, Puntureri spoke about both lay offs. However the charge in Case 6-CA-34661 alleging the unlawful lay off at Hermitage of the four skilled maintenance employees had been filed with the Region on May 7, 2005 and a copy of that charge had been sent to Respondent's President –  
40 Owner Albert Puntureri on May 9, 2005. See GC Exh. 1(a) and 1(b).

Puntureri would have known about the charge. It is unconceivable to me that Puntureri, an elderly man who had founded this company in 1968 which employed hundreds of people in more than a half dozen states, would speak to Sposito, a man he had laid off, about the matters  
45 Sposito claimed Puntureri spoke about.

There was ample economic justification for some lay offs and I note that a number of very active pro-union supporters were not laid off, e.g., John Adams, Steven Coonfare, Tom Bobby, and Jim Blair.

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I find that Sposito had a motive to fabricate. He had been laid off. There was no evidence that he would be recalled anytime soon and one other major reason. Sposito had his

teenage son help him out with Puntureri's yard. The son was to be paid by Puntureri but Puntureri fired the son because he was, according to Puntureri, not a good worker but lazy. Not only does Puntureri cost Joseph Sposito his job he also fires Sposito's son. It would be irrational for Sposito not to be mad as hell at Puntureri. This prompted Sposito, I find, to attribute statements to Puntureri that he never made in the hope that Sposito will be believed and get his job back.

In determining credibility issues one looks at many things to include the reasonableness or unreasonableness of the testimony. I just don't see Puntureri confiding in Sposito as Sposito says he did. It is possible that Puntureri could conclude that I'll tell Sposito whatever I want and deny it later because who will people believe me or Sposito. But I find it highly improbable that this occurred. I credit Puntureri over Sposito. Accordingly, I recommend that the Section 8(a)(1) violations alleged in the Complaint be dismissed as they were dependent on my crediting the testimony of Sposito.

Since I don't credit Sposito I must further conclude that Respondent having demonstrated an economic reason to cut expenses lawfully laid off the five skilled maintenance employees at Hermitage and the five terminal operators at Vanport. In reaching this conclusions I am aware that not all active union supporters were laid off and that some non union employees also lost their jobs.

I believe the General Counsel made a *prima facie* case under *Wright Line, Inc.*, 251 NLRB 1083 (1980), enf'd, 662 F.2d 899 (1<sup>st</sup> Cir. 1981), cert. denied, 455 US 989 (1982) but Respondent established that it would have laid off the skilled maintenance employees at Hermitage and the terminal operators at Vanport even in the absence of union activity by some of the laid off employees. If I had credited Sposito then the General Counsel would have won the case but I don't credit Sposito.

#### Conclusions of Law

1. Respondent, Interstate Chemical Co., Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union, International Chemical Workers Council of the United Food and Commercial Workers Union, Local 211-C, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent did not violate the Act as alleged in the complaint.

Upon the foregoing findings of fact and conclusions of law and pursuant to Section 10(c) of the Act, I hereby issue the following recommended<sup>2</sup>

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<sup>2</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The complaint is dismissed in its entirety.

5 Dated, Washington, D.C., May 3, 2006.

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Martin J. Linsky  
Administrative Law Judge

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